

APPEAL NO. 021896
FILED SEPTEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 27, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th, 13th, and 14th quarters and that the respondent (carrier) waived its right to contest the claimant's entitlement to SIBs for the 12th quarter by failing to timely request a benefit review conference (BRC) in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(d) (Rule 130.108(d)). In his appeal, the claimant essentially asserts error in each of those determinations. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying periods for the 12th, 13th, and 14th quarters of SIBs by demonstrating that he had no ability to work. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Nothing in our review of the hearing officer's determination in that regard reveals that it is so against the great weight as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As noted above, the hearing officer determined that the carrier waived its right to contest the claimant's entitlement to SIBs for the 12th quarter under Rule 130.108(d) by not requesting a BRC within 10 days of the date it received the claimant's Application for [SIBs] (TWCC-52). The carrier did not appeal that determination and it has, therefore, become final pursuant to Section 410.169. Nevertheless, and somewhat inexplicably, the hearing officer's legal conclusion is that the claimant is not entitled to SIBs for the 12th quarter. Accordingly, we reverse Conclusion of Law No. 3 and render a new Conclusion of Law No. 3 that "Claimant is entitled to [SIBs] for the 12th quarter, September 21, 2001, through December 20, 2001." Similarly, the first sentence of the Decision section of the hearing officer's decision is reversed and a new decision rendered that "Claimant is entitled to [SIBs] for the 12th quarter, September 21, 2001, through December 20, 2001."

The hearing officer's determination that the claimant is not entitled to SIBs for the 12th quarter is reversed and a new decision rendered that the claimant is entitled to SIBs for the 12th quarter because of the carrier's waiver. The balance of the hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **EVEREST NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEFFERY FORD
4514 COLE AVENUE, SUITE 1100
DALLAS, TEXAS 75205.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge